

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC.,

Plaintiff,

v.

HEALTHY SOLUTIONS, LLC, et al.,

Defendants.

CIVIL ACTION NO. 04-CV-10421-JLT

RELATED CASES

AFFIDAVIT OF CHRISTOPHER F. ROBERTSON

I, CHRISTOPHER F. ROBERTSON, declare as follows:

1. I have personal knowledge of the following facts, and could testify competently to them.

2. I am an attorney with the law firm of Seyfarth Shaw LLP in Boston, Massachusetts. I represent the defendant ITV Direct, Inc. ("ITV") in connection with the present litigation and litigation involving the same parties filed in the United States District Court for the Central District of California. That case has been transferred to this District by order dated April 15, 2004.

3. On April 7, 2004, members of the staff of the Federal Trade Commission contacted me in connection with the Guerrero Supreme Greens with MSM infomercial and other marketing materials featuring Guerrero, and notified me that the FTC was conducting an investigation of the claims made by Guerrero concerning the health and curative benefits of the product. In subsequent conversations with the FTC staff, they have indicated that they have prepared and intend to file a civil complaint against Guerrero and ITV, alleging that Guerrero lacks competent and reliable scientific evidence for the health claims he has made in connection with the Supreme Greens with MSM product. The FTC has indicated that the damages it would

seek in any such action would likely exceed the total assets of ITV and could put the company out of business.

4. On April 8, 2004, I notified Guerrero's counsel Becky Christiansen of the FTC investigation and requested that she provide to me substantiation in the form of competent and reliable scientific evidence for the health claims made by Guerrero in the infomercial and in other media. She repeatedly stated that Guerrero "stands behind" the health claims he made about the product and assured me that he could substantiate those claims to the satisfaction of the FTC. However, no such substantiation has been provided since April 8, 2004 and in subsequent conversations with the FTC, they have stated the FTC has not been provided such substantiation from Guerrero or from any other source.

5. I have also sought to obtain substantiation for the representation made by Guerrero and Gregory Geremesz to this Court in sworn affidavits that Guerrero is either a doctor or an OMD in California. No such substantiation has been provided, despite specific requirements under California Code of Regulations Title 16 for the education requirements necessary to refer to oneself as a doctor or OMD.

6. On February 11, 2004, the United States Food and Drug Administration conducted an audit of ITV's inventory of Supreme Greens with MSM. As a result of that audit, the FDA has notified ITV that it has concerns regarding the labeling of the Supreme Greens with MSM product and the health claims made by Guerrero on the Internet and in other media. The FDA had demanded corrective action or threatened to seize the product and/or seek an injunction against further sales. ITV is currently engaged in corrective action at its own significant expense to correct the labeling defects and the alleged misrepresentations by Guerrero identified by the FDA in connection with the product.

7. In conversations with the FTC and the FDA, each agency also stated to me or to employees of ITV that their investigations had raised concerns that Guerrero was not a doctor, despite his representations to that effect directly to ITV, on his website, in the infomercial and in other media. Both the FTC and the FDA indicated that Guerrero was not a medical doctor and

had not been awarded a doctorate by any university. In a subsequent private investigation commissioned by ITV, it appears that Guerrero is not a doctor and that ITV was lied to by Guerrero and Healthy Solutions when they represented that Guerrero is a doctor and/or an OMD.

8. Based upon the FTC and FDA investigations into the health claims made by Guerrero concerning Supreme Greens with MSM, and the discovery that Guerrero is not a doctor as he has repeatedly represented to ITV and publicly, on April 21, 2004 ITV sent an indemnification demand to Healthy Solutions seeking indemnification of all liabilities and expenses it may incur in connection with the pending investigations. That letter is attached as Exhibit A. The potential indemnification will likely far exceed the amounts that Healthy Solutions is claiming are due and owing in its counterclaim.

9. On April 28, 2004, I reviewed a tape of the ABC News program "20/20", first broadcast on April 23, 2004, in which Guerrero was interviewed by ABC in connection with Supreme Greens with MSM. In that segment, he confirmed for the first time that he has no scientific studies or support to back the health claims he made publicly and to ITV regarding Supreme greens with MSM. The transcript reads as follows:

ABC News: What kind of study is it that you have that supports this product?

Guerrero: Well, there is no study.

ABC News: So, when you say your clinical experience, what are you referring to?

Guerrero: Just my clients that I have seen.

ABC News: So, we have only your word. There is nothing published.

Guerrero: Nothing published.

ABC News: There is nothing written?

Guerrero: No.

ABC News: So, you have no scientific support for Supreme Greens?

Guerrero: No, there is no scientific support for Supreme Greens.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of April, 2004 at Boston, Massachusetts.

/s/ Christopher Robertson
CHRISTOPHER F. ROBERTSON